

ALB.12729

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

MICHAEL LOPEZ  
*Plaintiff*

V.

ALBERTSON'S COMPANIES, LLC d/b/a  
ALBERTSON'S, NORFOXX  
REFRIGERATION, LLC. and  
NORFOXX REFRIGERATION, INC  
*Defendants*

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Civil Action No. \_\_\_\_\_  
**Jury Demanded**

**DEFENDANT'S NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **ALBERTSON'S COMPANIES, LLC d/b/a ALBERTSON'S**,  
(hereinafter, "Defendant") in the above-styled cause, and files this Notice of Removal pursuant to  
28 U.S.C. §§ 1441 and 1332(a).

**I.  
BACKGROUND**

1. This lawsuit, and the claims asserted herein, arise from an incident that occurred on  
or about August 29, 2018, between Plaintiff Michael Lopez and Defendant **ALBERTSON'S  
COMPANIES, LLC d/b/a ALBERTSON'S**.

2. On or about May 1, 2020, Plaintiff sued Defendants in the County Court at Law  
No. 3, Dallas County, Texas, Cause No. CC-20-03819-C alleging that the negligence of  
Defendants caused her to sustain damages.

3. Plaintiff Michael Lopez is an individual residing in Carrollton, Texas.

4. Defendant **ALBERTSON'S COMPANIES, LLC D/B/A ALBERTSON'S** is a  
limited liability corporation formed in Delaware, with its corporate office and principal place of  
business in Boise, Idaho.

**DEFENDANT'S NOTICE OF REMOVAL**

5. Norfoxx Refrigeration, LLC and Norfoxx Refrigeration, Inc. are corporations formed in and authorized to do business in the State of Texas.

6. Defendant Albertson's Companies, LLC d/b/a Albertson's was served on or about September 1, 2020 and timely filed its Answer on September 28, 2020.

7. On November 2, 2020, Plaintiff filed her First Amended Petition wherein she dismisses the non-diverse Defendants Norfoxx Refrigeration, LLC and Norfoxx Refrigeration, Inc. from the suit.

8. Although the case was not removable at the time that Defendant Albertson's LLC d/b/a Albertson's filed its Original Answer, it became removable once Plaintiff voluntarily dismissed the non-diverse Norfoxx Defendants from the suit on November 2, 2020. Therefore, this removal is timely filed within the thirty (30) day time period. 28 U.S.C. 1446(b)(3).

9. Plaintiff's Original Petition and her First Amended Petition, filed contemporaneously herewith, Plaintiff seeks monetary relief "over \$200,000 but not more than \$1,000,000."

## **II.**

### **BASIS FOR REMOVAL**

10. Removal is proper under 28 U.S.C. § 1332(a) because Plaintiff's suit is a civil action in which this Court has original jurisdiction over the parties, based upon diversity jurisdiction under 28 U.S.C. § 1332. This action is removable to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) because Plaintiff is a citizen of the State of Texas, Defendant **ALBERTSON'S COMPANIES, LLC D/B/A ALBERTSON'S** is a Delaware corporation with its principal place of business in Boise, Idaho.

11. As the Court is certainly aware, for diversity purposes, a person is considered a citizen of the state where that person is domiciled. Plaintiff is a person and domiciled in Texas. If the person is an entity, the citizenship of a corporation is determined by its place of incorporation and its principal place of business. Defendant **ALBERTSON'S COMPANIES, LLC D/B/A ALBERTSON'S** is a Delaware corporation with its principal place of business in Idaho, and all of its members reside or are domiciled in the State of Idaho.

12. Because Plaintiff and Defendant **ALBERTSON'S COMPANIES, LLC D/B/A ALBERTSON'S** do not share citizenship in any state, removal is proper on diversity grounds.

13. Defendant **ALBERTSON'S COMPANIES, LLC D/B/A ALBERTSON'S** is now, and was at the time the removal process was initiated, diverse in citizenship from the Plaintiff. 28 U.S.C. § 1332.

14. Further, as set forth in Plaintiff's First Amended Petition filed with these pleadings here today, the amount in controversy in this action exceeds, exclusive of interest and costs, the sum of Seventy-Five Thousand and No/100 Dollars (\$75,000.00). Thus, the amount-in-controversy now meets the threshold for removal.

15. The United States District Court for the Northern District of Texas, Dallas Division, embraces Dallas County, Texas, the place in which the state court action was filed and is pending. This statement is not meant as a waiver of any argument that venue is improper in the location in which the state court action was filed, but merely demonstrates the propriety of removing the action to this federal judicial district.

16. The live pleadings before the state court are Plaintiff's First Amended Petition and Defendant's Original Answer. No other motions are pending before the state court.

17. All pleadings, process, orders, served upon Defendants in the state court action are attached to this Notice as Exhibit “A” as required by 28 U.S.C. § 1446(a). No other motions are pending before the state court.

18. Defendant will promptly file a copy of this Notice with the clerk of the state court in which the action is pending.

**III.**  
**REQUEST FOR JURY TRIAL**

19. Defendant **ALBERTSON’S COMPANIES, LLC D/B/A ALBERTSON’S** hereby demands a trial by jury in accordance with the provisions of Fed. R. Civ. P. 38.

WHEREFORE, PREMISES CONSIDERED, Defendant **ALBERTSON’S COMPANIES, LLC D/B/A ALBERTSON’S** as a party in diversity with the Plaintiff, respectfully requests that this action be immediately and entirely removed upon filing of this Notice of Removal to the United States District Court for the Northern District of Texas – Dallas Division, and for such other and further relief to which it may show itself to be justly entitled in equity or law.

Respectfully submitted,

*/s/ Michael P. Sharp*

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**ATTORNEYS FOR DEFENDANT**

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ALBERTSON’S**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 1<sup>st</sup> day of December, I electronically filed the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District – Dallas Division, using the electronic case filing system of the Court. Based on the electronic records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

***Via Electronic Service***

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*/s/ Michael P. Sharp*

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**MICHAEL P. SHARP**